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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUNTER HALMSCHLAGER, FRANZ STELZHAMMER,
ERICH BRUNNAUER, MANFRED GLOSER,
MANFRED FEICHTNER, THOMAS NAGLER,
JOHANNES STIMPFL, and JOSEF BACHLER

Appeal 2010-009975
Application 09/646,119
Technology Center 1700

Oral Hearing Held: October 14, 2010

Before CHUNG K. PAK, PETER F. KRATZ and CATHERINE Q. TIMM,
Administrative Patent Judges.

ON BEHALF OF THE APPELLANT:

ROBERT W. MUELLER, ESQ.
Greenblum & Bernstein, PLC
1950 Roland Clarke Place
Reston, Virginia 20191-1411
(703) 716-1191

1 The above-entitled matter came on for hearing on Thursday,
2 October 14, 2010, commencing at 1:39 p.m., at the U.S. Patent and
3 Trademark Office, 600 Dulany Street, 9th Floor, Alexandria, Virginia,
4 before Kevin Carr, Notary Public.

5 THE CLERK: Calendar No. 33, Appeal No. 2010-009975. Mr.
6 Mueller?

7 JUDGE PAK: Mr. Mueller?

8 MR. MUELLER: Yes.

9 JUDGE PAK: We have a court reporter here today, who is
10 going to transcribe all the arguments made. And that transcript will become
11 part of the record.

12 You have 20 minutes to argue this case. And you may start any
13 time you wish.

14 MR. MUELLER: Thank you.

15 This case is directed to an apparatus that's joined together,
16 different layers of a paper web.

17 Specifically the Applicant's claims are reciting at least two
18 layers in which each layer has a higher content of fines on one side than the
19 other, and couching the two layers together, so that each layer side, having a
20 higher content of fines, contact each other.

21 The prior art applied by the Examiner is Turner et al.
22 Applicants have tried to point out throughout prosecution that Turner, in
23 contrast to Applicant's invention, to have one side, so you have layer with
24 one side having more fines than the other side, Turner is specifically directed
25 to having a uniform surface, so that both sides are substantially the same.

1 Therefore, Turner actually teaches against the idea of having
2 one side with more fines than the other.

3 JUDGE PAK: But counsel, the language you referred to in
4 your brief, nearly the same after the dewatering process, sounds like it's not
5 exactly the same.

6 And also, another passage you referred to in your brief, where
7 the prior art Turner states that the dewatering through both surfaces of both
8 cup and base plies formation of the individual plies is accomplished faster
9 and equally important plied faces, which come into ply-binding engagement
10 are better prepared by virtue of having more fines and less fillers at their
11 surface, to remain permanently bonded together.

12 So it seems like there is some reason within the prior art to
13 provide more fines and fillers only to those surfaces, which would be subject
14 to bonding.

15 MR. MUELLER: According to Turner, Turner is like they're
16 trying to make sure that both sides are substantially uniform.

17 And while, yes, there will be, when in the second part you
18 pointed to, would be more fines and fillers, that shows each surface will
19 have more fines and fillers, because he's looking to have fines. That helps
20 with the bonding process.

21 But again, the surfaces themselves are intended to be uniform,
22 and those uniform surfaces would have more fines than fillers, however, in
23 contrast to our claims, which say we have one side, which has more fines
24 than the other.

1 JUDGE TIMM: Does the uniformity stem from how he's
2 operating the machine? Or is there a difference in apparatus that's
3 necessarily present that you -- in terms of his claim?

4 MR. MUELLER: It appears from Turner, it would actually be
5 from this, you know -- he shows this gap-former, which is what he's using to
6 create this uniformity.

7 So it's the apparatus of his gap-former.

8 And I know that in the Examiner's, in his brief, the Examiner
9 provided -- let me see, it looks like on page 4 of the Examiner's answer, he
10 provided sort of an annotated Figure 1, for trying to show how -- and this
11 was the Examiner's attempt to show that Turner could be configured to
12 operate like the claimed invention.

13 Now that discounts the fact that Turner says "I want uniformity,
14 I don't want one greater than the other."

15 But even looking at this drawing, while the Examiner has
16 referred to Applicant's, the background, what we refer to the fordrinier
17 having a higher, you know -- we said fordrinier has a concentration of fines
18 at the upper side from power pulses.

19 And then we go on to talk about the gap-former, which has the
20 higher concentration at the bottom. So given the Examiner has it reversed,
21 which is gap-former, because he is claiming that the higher content would be
22 at the top.

 But because it's at the bottom, as it goes through and is
23 turned around, the bottom then becomes the top, so the side with the higher
24 content would actually be at the top, and not bonded against the layer on the
25 fordrinier.

1 JUDGE TIMM: So what you're saying is it's essentially the
2 opposite of what you have in your --

3 MR. MUELLER: That's right.

4 Even if it was configured to have the difference between the top
5 and bottom, this piece of art ends up being backwards, because the side with
6 the high content of fines are not together. They're actually separated.

7 JUDGE KRATZ: So in terms of your Claim 46, you're really
8 looking at it as a more of, almost as if it's a functional limitation of the
9 formers that you've had?

10 MR. MUELLER: Yeah. Because it does create, yes, a certain
11 termed structure that, for the web coming through. JUDGE PAK: So
12 it requires structures, presumably what you guys invented, right? Not
13 something --

14 MR. MUELLER: Right, the combination of
15 structures --

16 JUDGE PAK: Combination of structures you guys invented.

17 MR. MUELLER: I'm sorry?

18 JUDGE PAK: Combination of structures, what your inventors
19 have invented.

20 MR. MUELLER: Right.

21 JUDGE PAK: Not necessarily any and all structures, which are
22 capable of performing this function, including those which have not been
23 invented at this time.

24 MR. MUELLER: Well, right.

1 What goes from our claim, which is that is has, again, they are
2 arranged so that the layers have the specific features of the higher
3 concentration on one side than the other.

4 And we also recite at least one gap-former.

5 That's what see as our distinction. And if you have questions?

6 JUDGE TIMM: Does the word "formers" in this art have a
7 particular structural meaning?

8 MR. MUELLER: Former itself is just the piece of machinery at
9 the beginning, when the very wet, pulpy suspension is placed on, you know,
10 what's usually called a "forming wire."

11 And it's the beginning of the process in which they begin the
12 formation of the web, the sheet.

13 JUDGE TIMM: So one of ordinary skill in the art would
14 attribute some structure to that word?

15 MR. MUELLER: And as we've noted, even in our background
16 we talk about that there are different types of formers.

17 There is the fordrinier, there is the gap-former. We even
18 discussed, you know, a hybrid former.

19 So one of ordinary skill in the art would, you know, understand
20 that there are a number of different type of formers.

21 JUDGE PAK: But how do we know which formers are capable
22 of performing your claimed function? Is it the conventional one that you
23 describe?

24 You know, if it is, there's no difference between your machine
25 and the prior art.

1 MR. MUELLER: I'm sorry?

2 JUDGE PAK: If what you describe as a former --

3 MR. MUELLER: Mm-hmm --

4 JUDGE PAK: For performing this function includes what is
5 conventional in the art, you know, clearly then, there is no difference
6 between your machine versus what's already known in the art.

7 MR. MUELLER: Well, we're reciting, you know, or claiming
8 that the former, it's a former that does produce the -- having the greater --

9 JUDGE PAK: So you are using a former in the context of the
10 specific type of structures that are capable of performing this function.
11 Right?

12 MR. MUELLER: That's right.

13 JUDGE PAK: So you're not including any and all known
14 formers?

15 MR. MUELLER: The ones that would perform that function.
16 And we do recite, you know, again, it's at least one gap-former.

17 JUDGE PAK: That is capable of either described in the spec at
18 least one gap-former, which is capable of performing this function?

19 MR. MUELLER: Right.

20 JUDGE KRATZ: And I would take it that the apparatus that
21 with respect to Claim 46 requires that the couching zone that includes
22 structures such that when they're air brought together, that you have the right
23 sides matching each other, as they're brought in there.

24 MR. MUELLER: Right.

25 JUDGE KRATZ: That's implicit in the way you're claiming it.

1 MR. MUELLER: Right. You know, our drawings kind of
2 show, you know, certain different embodiments, where -- but that, yes, so
3 that the higher fines are joined together at the point that they --

4 JUDGE KRATZ: Do you have any argument other than that,
5 that --

6 MR. MUELLER: Actually, no -- that's our position, and --

7 JUDGE PAK: I thank you for coming.

8 MR. MUELLER: Well, I thank you for your time.

9 Whereupon, at 1:52 p.m., the proceedings were concluded.

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